IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 2575 of 2004
In
SPECIAL CIVIL APPLICATION No. 2344 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION LIMITED - Appellant(s)

Versus

AHMED ADAMVALI BAPALAL - Defendant(s)

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Appearance :
MS SEJAL K MANDAVIA for Petitioner No(s).: 1.
MR JS BRAHMBHATT for Respondent No(s).: 1.
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1.The appellant-Gujarat State Road Transport Corporation Ltd., being aggrieved by the order dated 24.2.2004, passed in Special Civil Application No. 2344 of 2004 by the learned Single Judge, confirming the order/award dated 27.3.2003 made in Reference (LCB) No. 49 of 1995, Bharuch, interfering in the question of quantum of punishment, is before this Court.

2. The facts necessary for disposal of the present matter are that the respondent-workman was working as a Conductor with the present appellant, on duty, after collecting fare, he did not issue the tickets to the passengers, therefore, a charge sheet was issued and on conclusion of the inquiry, he was terminated. Being aggrieved by the said award of the punishment, the respondent-workman opted for a Reference. The learned Labour Court observed that the act of the present respondent was not fair, but observing that the punishment was disproportionate to the alleged wrong or misconduct, after setting aside the order of termination, it directed withholding of five increments with future effect and also ordered the reinstatement without back wages.

3. The learned Single Judge refused to interfere in the matter, therefore, the appellant-establishment is

before us.

4. Ms. S.K. Mandavia, learned counsel for the appellant submitted that the present is a case where the respondent-workman acted dishonestly and after receiving the fare, did not issue the tickets. It is also submitted that in a case of dishonesty, employer is entitled to terminate the services of the workman, because, no employer can be asked to carry on the services of the dishonest person. It was also submitted that the punishment of withholding of five increments with future effect also cannot be executed, because, the respondent-workman is to retire in 2007.

5. Learned counsel for the respondent, on the other hand, submitted that the present was not a case of a long route bus, but was in relation to a local/city bus, where, after receiving the fare the respondent-workman was continuing process of issuing tickets. His submission is that there may be some lapses on the part of the respondent-workman, but the misconduct cannot be found on his part.

6. The learned Labour Court had found a misfeasance on the part of the respondent-workman and had awarded the punishment. The finding of wrong act/misfeasance and the award of the punishment was never subjected to any

challenge by the respondent, therefore, the said finding of wrong act has attained finality. The learned Single Judge also did not interfere into the said finding, but observed that the Labour Court could interfere in the matter if it found that the punishment was disproportionate to the alleged misconduct.

7. During course of the arguments, learned counsel for the respondent, when was confronted with the situation that the respondent is to retire in 2007 and the punishment to its fullest extent cannot be executed, submitted to the Court that the respondent-workman may be reduced to five stages in the pay-scale from the date when he was found guilty in the departmental inquiry. Though some resistance was made by the learned counsel for the appellant to this proposal, but taking into consideration that the two courts, i.e., the Labour Court has interfered in the quantum of punishment and the learned Single judge has refused to interfere in the matter and that appropriate punishment is to be awarded to a wrong doer and the respondent-workman himself says that such punishment may be awarded, which may satisfy the requirement of the Rules, we hereby order that from the date of the

termination to the date of award, the respondent-workman shall not be entitled to any back wages. We hereby direct that instead of punishment of withholding five increments with future effect, the respondent-workman shall suffer the afore-referred punishment i.e., he would be reduced to five stages below in the pay-scale what he was drawing on the date of the termination. The appeal stands disposed of.

[R.S. GARG, J.]

[RAVI R. TRIPATHI, J.]

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